

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:

TIMOTHY DALE COLLINS,

Debtor.

Case No. 19-30658
Chapter 7

TRUSTEE'S MOTION FOR APPROVAL OF CARVE-OUT AGREEMENT

COMES NOW the Chapter 7 Trustee, A. Burton Shuford, and moves this Court as follows:

1. Timothy Dale Collins (the "Debtor"), filed a petition with this Court under Chapter 7 of the Bankruptcy Code on May 16, 2019 thereby creating a bankruptcy estate (the "Estate").

2. A. Burton Shuford is the duly appointed and acting trustee of the Estate (the "Trustee").

3. Among the assets of the Estate is the following parcel of real property (the "Real Property").

- 2640 Shenandoah Avenue, Charlotte, NC ("Shenandoah"):
 - Listing price of Real Estate per Broker's opinion: \$300,000.00;
 - Exemption Claimed by Debtor in Schedule C: \$30,000.00¹;
 - Approximate amount of Mortgage liens:
 - First Mortgage in favor of Quicken Loans, Inc.: \$178,981.00;
 - Second Mortgage: -None.

4. The records of the Clerk of the Superior Court for Mecklenburg County indicate that the Real Property is also subject to the judgment lien of FM Capital, LLC ("FMC") in the principal amount of \$3,083,150.42 entered in the case of FM Capital, LLC v. Timothy D. Collins, et al. Case No. 18-CVS-2356 (the "Judgment").

5. Based upon the estimated market value of the Real Property; the mortgage liens against the Real Property; the Judgment and other encumbrances against the Real Property exceed the market value of the Real Property.

6. The Handbook for Chapter 7 Trustees published by the Executive Office of the United States Trustee, states on pages 4 – 14 under Section 9 "Sales of Assets" (a) General Standards "A trustee may sell assets only if the sale will result in a meaningful distribution to creditors." The Section further states "the trustee may seek a "carve-out" from a secured creditor and sell the property at issue if the "carve-out" will result in a meaningful distribution to creditors.

¹ The Trustee has questioned the Debtor's entitlement to this exemption and may object to the same.

Further, the Section states “The trustee must also consider whether the cost of administration or tax consequences of any sale would significantly erode or exhaust the estate’s equity interest in the asset.”

7. The Trustee has entered into negotiations with FMC and reached an agreement as follows:

- a. FMC agrees that the Estate may market the Real Property for sale and will not object to any proposed sale on the grounds that the price at which the Real Property is to be sold is less than the aggregate value of the liens against the Real Property, 11 U.S.C. §363 (f) (3), although FMC may object to a proposed sale on any other basis;
- b. FMC agrees that the Trustee may pay the following expenses and costs of sale for the gross sales proceeds of the Real Property; Commercial Insurance Policy insuring the Real Property (not including the cost of general liability coverage); real estate commission; pro-rated real estate taxes; revenue stamps; valid liens against the Real Property that have priority over the lien of FMC; any capital gains taxes owed by the Estate (collectively the “Sale Expenses”) and the “Net Sale Proceeds” shall equal the Gross Sales Proceeds of the Real Property less the Sale Expenses; and,
- c. The Net Sale Proceeds shall be divided between FMC and the Estate such that FMC shall receive 75% of the Net Sale Proceeds and the Estate shall receive a carve-out of 25% of the Net Sale Proceeds of the Real Property for the benefit of the administrative costs of the Estate and the unsecured creditors of the Estate, which will result in a meaningful distribution to the creditors.

WHEREFORE, the Trustee prays that this Court approve the above agreement between the Trustee and FMC.; and for such other and further relief as the Court determines is appropriate.

This 2nd day of August, 2019.

/s/ A. Burton Shuford
A. Burton Shuford, NCBN 10035
4700 Lebanon Road, Suite A-2
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Attorney for the Trustee

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:

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Debtor.

Case No. 19-30658
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NOTICE OF TRUSTEE'S MOTION FOR APPROVAL OF CARVE-OUT
AGREEMENT AND NOTICE OF HEARING

A. Burton Shuford, Trustee, through his attorney, has filed papers with the Court as described above. A copy of this Motion is attached to this Notice. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

A hearing will be held to consider this Motion on **August 26, 2019 at 9:30 AM** at the United States Federal Courthouse, 401 W. Trade Street, Charlotte, North Carolina. No further notice of this hearing will be given.

All interested parties may attend and be heard. If you do not oppose the Motion you do not have to attend.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting the requested relief.

This 2nd day of August, 2019.

/s/ A. Burton Shuford

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Attorney for the Trustee

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
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IN RE:

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of by depositing copies of *TRUSTEE'S MOTION FOR APPROVAL OF CARVE-OUT AGREEMENT* and *NOTICE OF HEARING* by either Electronic Case Filing as indicated below or in the exclusive care and custody of the United States Postal Service, with proper postage thereto affixed, addressed to the parties listed on the attached Exhibit "A".

Shelley K. Abel, US Bankruptcy Administrator

VIA ELECTRONIC CASE FILING

Marcus D. Crow, Counsel for Debtor

VIA ELECTRONIC CASE FILING

Timothy Dale Collins
2633 Shenandoah Avenue
Charlotte, NC 28205

Jeffrey A. Long, Esq.
Bray & Long, PLLC
Tranquil Court
2820 Selwyn Avenue, Suite 400
Charlotte, North Carolina 28209

This 2nd day of August, 2019.

/s/ A. Burton Shuford

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~~Label Matrix for Local noticing
0419-3
Case 19-30658
Western District of North Carolina
Charlotte
Thu Aug 1 15:49:30 EDT 2019~~

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P.O. Box 981535
El Paso, TX 79998-1535

~~Document
Charlotte Division
401 West Trade Street
Charlotte, NC 28202-1633~~

ADT Bankruptcy Specialist
3190 South Vaughn Way
Aurora, CO 80014-3512

Atrium Healthcare System
P.O. Box 32861
Charlotte, NC 28232-2861

Auto Trakk
1500 Sycamore Road, Suite 200
Montoursville, PA 17754-9416

AutoZone, Inc.
c/o Altus GTS, Inc.
2400 Veterans Memorial Blvd, Ste.300
Kenner, LA 70062-8725

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Citi Card
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3268 Progress Way, Bldg. 12
MSC-5200
Wilmington, OH 45177-7700

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19500 Jamboree Road, Suite 500
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Consumer Portfolio Services
PO Box 57071
Irvine, CA 92619-7071

Dealer Marketing Services/ProMax
c/o McCarthy, Burgess & Wolff
26000 Cannon Road
Cleveland, OH 44146-1807

Discover Bank
Discover Product Inc
PO BOX 3025
New Albany, OH 43054-3025

(p)DISCOVER FINANCIAL SERVICES LLC
PO BOX 3025
NEW ALBANY OH 43054-3025

Equifax Credit Inf. Serv., Inc
P.O. Box 740241
Atlanta, GA 30374-0241

Experian, Inc.
P. O. Box 9701
Allen, TX 75013-9701

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FM Capital, LLC
Bray & Long, PLLC
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Collection Agency Division
6330 Gulfton
Houston, TX 77081-1108

Gibraltar Capital Advance, LLC
c/o Robbins, Salomon & Patt, LTD.
180 N. LaSalle Street, Suite 3300
Chicago, IL 60601-2808

Great American Bond Company
301 East 4th Street
Cincinnati, OH 45202-4278

Headway Capital, LLC
175 W. Jackson Blvd., Suite 1000
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Centralized Insolvency Operations
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Internal Revenue Service
P.O. Box 7317
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30 Broad Street
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NC Dept. of Revenue
Bankruptcy Unit, Dept of Revenue
PO Box 1168
Raleigh, NC 27602-1168

Nextgear Capital, Inc.
1320 City Center Drive, Suite 100
Carmel, IN 46032-3816

North Carolina Department of Revenue
Bankruptcy Unit
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Raleigh, NC 27602-1168

PMAB, Inc.
P. O. Box 12150
Charlotte, NC 28220-2150

Peninsula Yacht Club
18501 Harbor Light Boulevard
Cornelius, NC 28031-7628

ProMax Unlimited
2900 AAA Court
Bettendorf, IA 52722-3407

Prosper Marketplace, Inc.
221 Main Street, Suite 300
San Francisco, CA 94105-1909

Quicken Loans
Bankruptcy Department
1050 Woodward Avenue
Detroit, MI 48226-1906

Regions Bank
Bankruptcy Department
PO Box 11007
Birmingham, AL 35288-0001

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Shapiro & Ingle, L.L.P.
10130 Perimeter Parkway, Ste 400
Charlotte, NC 28216-0034

Trans Union
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Chester, PA 19016-1000

U.S. Bankruptcy Administrator Office
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Charlotte, NC 28202-1673

United Auto Credit Corp.
PO Box 277536
Sacramento, CA 95827-7536

United Auto Credit Corporation
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PO Box 70826
Charlotte, NC 28272-0826

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Wells Fargo Bank
National Recovery Center
PO Box 25341
Santa Ana, CA 92799-5341

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P.O. Box 168048
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Wells Fargo Home Mortgage, Inc.
PO Box 10335
Des Moines, IA 50306-0335

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~~Timothy Dale Collins
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Discover Card
PO Box 30943
Salt Lake City, UT 84130

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Quicken Loans Inc.

(u)Wells Fargo Bank, N.A.,

(u)Brian T. Bain
Keller Williams Realty

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Bypassed recipients	3
Total	71